

### **REMARKS**

Claims 109, 112-117, 120 and 121 are pending in the application. Claims 109 and 116 are amended herein. No new matter is entered.

The issues outstanding in this application are as follows:

- Claims 109, 112-113, 116, and 120-121 are rejected under 35 U.S.C. § 102, on the alleged basis of being anticipated by Cone Jr. (U.S. Patent No 4,724,234).
- Claims 109, 112-113, and 114 are rejected under 35 U.S.C. § 103, on the alleged basis of being obvious over Cone Jr. in view of Jacob (“Cancer Chemotherapy”, National Medical Series for Independent Study: Pharmacology (Fourth Edition), Williams and Wilkins, 1996; p.253-274).
- Claims 109, 112-113, and 115 are rejected under 35 U.S.C. § 103, on the alleged basis of being obvious over Cone Jr. in view of Martiniello-Wilks et al. (In Vivo Gene Therapy for Prostate Cancer: Preclinical Evaluation of Two Different Enzyme-Directed Prodrug Therapy Systems Delivered by Identical Adenovirus Vectors”, Hum Gene Ther, 1998 Jul 20; 9(11):1617-1626).
- Claims 116-117 and 120-121 are rejected under 35 U.S.C. § 103, on the alleged basis of being obvious over Cone Jr. in view of Camden (WO 97/05870).

Applicant respectfully traverses the outstanding rejections, and applicant respectfully requests reconsideration and withdrawal thereof in light of the amendments and remarks contained herein.

#### **I. Claim rejection under 35 U.S.C. § 102(b), Cone Jr.**

Claims 109, 112-113, 116, and 120-121 are rejected under 35 U.S.C. § 102(b), on the alleged basis of being anticipated by Cone Jr. (U.S. Patent No 4,724,234). Applicants traverse.

To anticipate a claim, the reference must teach every element of the claim (MPEP § 2131). Cone Jr. does not teach the treatment of a subject having an infection that result from *Borrelia burgdorferi*, *Mycobacterium leprae*, *Treponema pallidum*, HIV, hepatitis C, herpes

virus or papillomavirus or an infestation that results from *Candida*, *Sporothrix schenkii*, *Histoplasma*, paracoccidioides, *Aspergillus*, *Leishmania*, malaria, acanthamoeba or cestodes, as required by the currently amended independent claims and, thereby, claims dependent on said independent claims. Thus, Cone Jr. does not anticipate the current claims.

Applicant kindly requests withdrawal of the rejection.

## **II. Claim rejection under 35 U.S.C. § 103(a), Cone Jr. in view of Jacob**

Claims 109, 112-113, and 114 are rejected under 35 U.S.C. § 103(a), on the alleged basis of being obvious over Cone Jr. in view of Jacob ("Cancer Chemotherapy", National Medical Series for Independent Study: Pharmacology (Fourth Edition), Williams and Wilkins, 1996; p.253-274). Applicants respectfully traverse.

For a *prima facie* case of obviousness to be made, all claim limitations must be accounted for (MPEP 2143.03). Neither Cone Jr. nor Jacob account for treatment of a subject having an infection that result from *Borrelia burgdorferi*, *Mycobacterium leprae*, *Treponema pallidum*, HIV, hepatitis C, herpes virus or papillomavirus or an infestation that results from *Candida*, *Sporothrix schenkii*, *Histoplasma*, paracoccidioides, *Aspergillus*, *Leishmania*, malaria, acanthamoeba or cestodes, as required by the currently amended independent claims. Thus, the combination of Cone Jr. and Jacob does not support a *prima facie* case of obviousness for the claims.

Applicant respectfully requests withdrawal of the rejection.

## **III. Claim rejection under 35 U.S.C. § 103(a), Cone Jr. in view of Martiniello-Wilks**

Claims 109, 112-113, and 115 are rejected under 35 U.S.C. § 103(a), on the alleged basis of being obvious over Cone Jr. in view of Martiniello-Wilks et al. (In Vivo Gene Therapy for Prostate Cancer: Preclinical Evaluation of Two Different Enzyme-Directed Prodrug Therapy Systems Delivered by Identical Adenovirus Vectors", Hum Gene Ther, 1998 Jul 20; 9(11):1617-1626). Applicants respectfully traverse.

For a *prima facie* case of obviousness to be made, all claim limitations must be accounted for (MPEP 2143.03). Neither Cone Jr. nor Martiniello-Wilks et al. account for treatment of a subject having an infection that result from *Borrelia burgdorferi*, *Mycobacterium leprae*, *Treponema pallidum*, HIV, hepatitis C, herpes virus or papillomavirus or an infestation that results from *Candida*, *Sporothrix schenkii*, *Histoplasma*, paracoccidioides, *Aspergillus*, *Leishmania*, malaria, acanthamoeba or cestodes, as required by the currently amended independent claims. Thus, the combination of Cone Jr. and Martiniello-Wilks does not support a *prima facie* case of obviousness for the claims.

Applicant respectfully requests withdrawal of the rejection.

#### **IV. Claim rejection under 35 U.S.C. § 103(a), Cone Jr. in view of Camden**

- Claims 116-117 and 120-121 are rejected under 35 U.S.C. § 103(a), on the alleged basis of being obvious over Cone Jr. in view of Camden (WO 97/05870). Applicants respectfully traverse.

For a *prima facie* case of obviousness to be made, all claim limitations must be accounted for (MPEP 2143.03). Neither Cone Jr. nor Camden account for treatment of a subject having an infection that result from *Borrelia burgdorferi*, *Mycobacterium leprae*, *Treponema pallidum*, HIV, hepatitis C, herpes virus or papillomavirus or an infestation that results from *Candida*, *Sporothrix schenkii*, *Histoplasma*, paracoccidioides, *Aspergillus*, *Leishmania*, malaria, acanthamoeba or cestodes, as required by the currently amended independent claims. Thus, the combination of Cone Jr. and Camden does not support a *prima facie* case of obviousness for the claims.

Applicant respectfully requests withdrawal of the rejection.

#### **CONCLUSION**

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2375, under Order No. HO-P01615US1 from which the undersigned is authorized to draw.

Dated: September 26, 2008

Respectfully submitted,

By /ALLEN E. WHITE/  
Allen E. White  
Registration No.: 55,727  
FULBRIGHT & JAWORSKI L.L.P.  
Fulbright Tower  
1301 McKinney, Suite 5100  
Houston, Texas 77010-3095  
(713) 651-5151  
(713) 651-5246 (Fax)  
Attorney for Applicant